



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

SEP 28 2004

REPLY TO THE ATTENTION OF  
(AE-17J)

CERTIFIED MAIL

RETURN RECEIPT REQUESTED

James S. Westerman, President  
Carbit Paint Company  
927 W. Blackhawk St.  
Chicago, IL 60604-3590

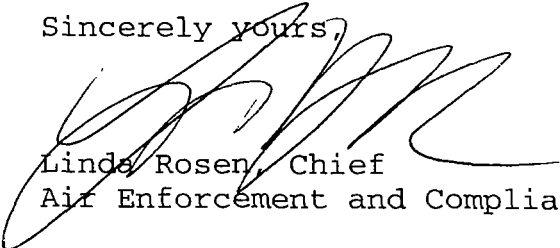
Dear Mr. Westerman:

Enclosed is a file stamped Consent Agreement and Final Order (CAFO) which resolves violations at Carbit's Chicago, Illinois facility, CAA Docket No. CAA-05-2004 0047. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on SEP 28 2004.

Pursuant to paragraph 29 of the CAFO, Carbit must pay the civil penalty within 30 days of SEP 28 2004. Your check must display the case docket number, CAA-05-2004 0047, and the billing document number, 050304040.

Please direct any questions regarding this case to Louise Gross, Associate Regional Counsel, (312) 886-6842.

Sincerely yours,



Linda Rosen, Chief

Air Enforcement and Compliance Assurance Section (MI/WI)

Enclosure

cc: Rebecca Vahle (w/enclosure)

Y f

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

**IN THE MATTER OF:**

Carbit Paint Company  
Chicago, Illinois

**Respondent .**

**Docket No.**

## Consent Agreement and Final Order

## CONSENT AGREEMENT AND FINAL ORDER

## I. JURISDICTIONAL AUTHORITY

1. This is a civil administrative action commenced and concluded simultaneously pursuant to Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b), and 22.18(b) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination, or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.1(a)(2), 22.13(b), and 22.18(b).

2. Complainant, the Director of the Air and Radiation Division, United States Environmental Protection Agency, Region 5 (U.S. EPA), brings this administrative action seeking a civil penalty under Section 113(d) of the Act, 42 U.S.C. § 7413(d).

3. The Respondent is Carbit Paint Company (Carbit or Respondent), a corporation doing business in Illinois.

US ENVIRONMENTAL  
PROTECTION AGENCY  
REGION V

04 SEP 28 A11:44

RECEIVED  
REGIONAL HEADQUARTERS  
CLARK



## II. STATUTORY AND REGULATORY BACKGROUND

4. Under Section 183(e) of the Act, 42 U.S.C. § 7511b(e), the Administrator of U.S. EPA promulgated regulations establishing requirements regarding the manufacture of certain consumer or commercial products, the use of which may result in the release of volatile organic compounds (VOCs).

5. Pursuant to Section 183(e) of the Act, 42 U.S.C. § 7511b(e), on September 11, 1998, U.S. EPA promulgated National VOC Emission Standards for Architectural Coatings at 40 C.F.R. Part 59, Subpart D (Architectural Coatings Standards).

6. The Architectural Coatings Standards apply to each "architectural coating," as that term is defined at 40 C.F.R. § 59.401, manufactured on or after September 13, 1999 for sale or distribution in the United States.

7. The Architectural Coatings Standards, at 40 C.F.R. § 59.401, define "manufacturer" as a person that produces, packages, or repackages architectural coatings for sale or distribution in the United States.

8. The Architectural Coatings Standards, at 40 C.F.R. § 59.408(b), require each manufacturer and importer of any architectural coating subject to Subpart D to submit an initial notification report no later than September 13, 1999 or within 180 days after the date that the first architectural coating is manufactured or imported, whichever is later.



9. The Architectural Coatings Standards, at 40 C.F.R. § 59.405(a)(2), require each manufacturer and importer of any architectural coating subject to Subpart D to provide on the label or lid of the container in which they sell or distribute the coating, a statement of the manufacturer's recommendation regarding thinning of the coating. The Architectural Coatings Standards, at 40 C.F.R. § 59.405(a)(3), further require each manufacturer and importer of any architectural coating subject to Subpart D to display the VOC content of the coating on the label or lid of the container in which they sell or distribute the coating. The VOC content must be indicated either as the actual VOC content of the coating, or as the VOC content limit with which the coating is required to comply, and does comply.

10. The Architectural Coatings Standards, at 40 C.F.R. § 59.402(a), require each manufacturer and importer of any architectural coating subject to Subpart D to ensure that the VOC content of the coating does not exceed the applicable limit in Table 1 of Subpart D.

11. The Administrator of U.S. EPA may assess a civil penalty of up to \$27,500 per day for each violation, with a maximum of \$220,000, for violations of the Architectural Coatings Standards that occurred between January 31, 1997 and March 15, 2004, and may assess a civil penalty of up to \$32,500 per day for each violation, with a maximum of \$270,000, for violations that





occurred on and after March 15, 2004, under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19, as amended at 69 Fed. Reg. 7121 (February 13, 2004).

### **III. FACTUAL ALLEGATIONS**

12. Carbit owns and operates a coating manufacturing facility located at 927 W. Blackhawk Street in Chicago, Illinois (the Chicago facility).

13. At the Chicago facility, Carbit manufacturers and distributes, among others, coatings identified by the following product numbers: 1132, 1189, 1301, 1302, 1501, 1502, 1503, 1702, SG111, SG113, SG152, SG181, SG230, and SG512 all as non-flat interior coatings, 83Y2LF as a zone marking coating, and 88R1, P220, P221, P250, P251, P261, P270, and P272 as floor coatings.

14. Since at least September 13, 1999, Carbit has manufactured and distributed "architectural coatings," as defined in 40 C.F.R. § 59.401.

15. Carbit did not submit an initial notification report until October 13, 2003.

16. The VOC contents of the products listed in paragraph 13, above, exceed the applicable limits in Table 1 of Subpart D until January 1, 2003.

17. On March 29, 2004, U.S. EPA issued a Finding of Violation to Carbit.

### **IV. VIOLATIONS**



18. As set forth above, Carbit failed to submit an initial notification report by September 13, 1999, constituting a violation of 40 C.F.R. § 59.408(b) and Sections 183 and 111(e) of the Act, 42 U.S.C. §§ 7511b and 7411(e).

19. As set forth above, Carbit exceeded the VOC limit for the coatings listed in paragraph 13, above, without paying exceedance fees or submitting tonnage exemption reports, constituting a violation of 40 C.F.R. § 59.402(a) and Sections 183 and 111(e) of the Act, 42 U.S.C. §§ 7511b and 7411(e).

#### **V. STIPULATIONS**

20. Carbit admits the jurisdictional allegations and neither admits nor denies the factual allegations described herein.

21. Carbit consents to the issuance of this CAFO and the assessment of a civil penalty, as outlined in Section VI of this CAFO.

22. Carbit consents to all of the terms and conditions in this CAFO.

23. Carbit waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c).

24. Carbit waives its right to contest the allegations in this CAFO, and waives its right to appeal under Section 113(d) of the Act, 42 U.S.C. § 7413(d).

25. Carbit certifies that it is complying fully with the

Architectural Coatings Standards at its coating manufacturing facility in Chicago, Illinois.

26. Carbit and U.S. EPA agree that settling this action without further litigation, upon the terms of this CAFO, is in the public interest.

#### **VI. CIVIL PENALTY**

27. Pursuant to Section 113(e) of the Act, 42 U.S.C. § 7413(e), in determining the amount of the penalty assessed, U.S. EPA took into account (in addition to such other factors as justice may require), the size of Carbit's business, the economic impact of the penalty on Carbit's business, Carbit's full compliance history and good faith efforts to comply, the duration of the violations, payments by Carbit of penalties previously assessed for the same violations, the economic benefit of noncompliance, and the seriousness of the violations.

28. Based on an analysis of the above factors, including Carbit's cooperation and prompt return to compliance, U.S. EPA has determined that an appropriate civil penalty to settle this action is \$33,000.

29. Carbit must pay the \$33,000 civil penalty by cashier's or certified check payable to the "Treasurer, United States of America," in accordance with paragraphs 30 and 31 below, within 30 days of the effective date of this CAFO.

30. Carbit must send the check to:

U.S. Environmental Protection Agency  
Region 5  
P.O. Box 70753  
Chicago, Illinois 60673

31. A transmittal letter, stating Respondent's name, complete address, the case docket number, and the billing document number must accompany the payment. Respondent must write the case docket number and the billing document number on the face of the check. Respondent must send copies of the check and transmittal letter to:

Attn: Regional Hearing Clerk, (E-19J)  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604-3590

Attn: Compliance Tracker, (AE-17J)  
Air Enforcement and Compliance Assurance Branch  
Air and Radiation Division  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604-3590

Louise Gross, (C-14J)  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604-3509

32. This civil penalty is not deductible for federal tax purposes.

33. If Carbit does not pay timely the civil penalty, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action under Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). The



validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

34. Interest will accrue on any overdue amount from the date payment was due at a rate established under 31 U.S.C. § 3717. Carbit will pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. Carbit will pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue according to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter.

## **VII. General Provisions**

37. This CAFO constitutes a settlement by U.S. EPA of all claims for civil penalties pursuant to Sections 111(e) and 113 of the Act, 42 U.S.C. §§ 7411(e) and 7413, for the violations alleged in Section IV of this CAFO. Nothing in this CAFO is intended to, nor shall be construed to, operate in any way to resolve any criminal liability of Carbit arising from the violations alleged in this CAFO or liability related to other violations of the Act. Compliance with this CAFO shall not be a defense to any actions subsequently commenced pursuant to Federal laws and regulations administered by U.S. EPA, and it is the responsibility of Carbit to comply with such laws and





regulations.

38. Nothing in this CAFO restricts U.S. EPA's authority to seek Carbit's compliance with the Act and other applicable laws and regulations.

39. This CAFO does not affect Carbit's responsibility to comply with the Act and other applicable federal, state, and local laws and regulations.

40. This CAFO constitutes an "enforcement response" as that term is used in "U.S. EPA's Clean Air Act Stationary Source Civil Penalty Policy" to determine Carbit's "full compliance history" under Section 113(e) of the Act, 42 U.S.C. § 7413(e).

41. The terms of this CAFO bind Carbit, its officers, directors, servants, employees, agents, successors, and assigns, including, but not limited to, subsequent purchasers.

42. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.

43. Each party shall bear its own costs and attorneys' fees in connection with the action resolved by this CAFO.

44. This CAFO shall become effective on the date it is filed with the Regional Hearing Clerk, Region 5.

45. This CAFO constitutes the entire agreement between the parties.

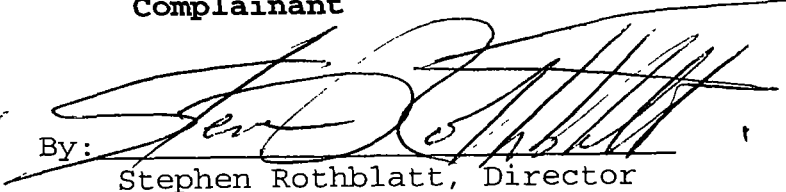


**U.S. Environmental Protection Agency,  
Complainant**

Date:

9/24/2004

By:



Stephen Rothblatt, Director  
Air and Radiation Division  
U.S. Environmental Protection  
Agency, Region 5 (A-18J)

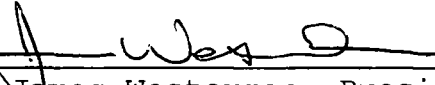
CAA-05-2004-0047



**Carbit Paint Company,  
Respondent**

Date: Sept. 16, 2004

By:

  
James Westerman, President  
Carbit Paint Company

CAA-95- 2004 0047



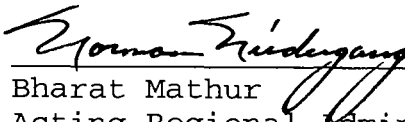
CONSENT AGREEMENT AND FINAL ORDER  
Carbit Paint Comapany, Chicago, Illinois  
Docket No.

CAA-05- 2004 0047

Final Order

It is ordered as agreed to by the parties and as stated in the consent agreement, effective immediately upon filing of this CAFO with the Regional Hearing Clerk.

Dated: 9/24/04

*Bm*   
Bharat Mathur  
Acting Regional Administrator  
U.S. Environmental Protection  
Agency, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

CAA-05- 2004 0047

CERTIFICATE OF SERVICE

I, Shanee Rucker, certify that I hand delivered the original of the Consent Agreement and Final Order, docket number CAA-05-2004 0047 to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that I mailed a correct copy by first-class, postage prepaid, certified mail, return receipt requested, to Carbit Paint Company by placing it in the custody of the United States Postal Service addressed as follows:

James S. Westerman  
Carbit Paint Company  
927 W. Blackhawk St.  
Chicago, IL 60604-3590

on this 28<sup>th</sup> day of September, 2004

RECEIVED  
REGIONAL HEARING  
CLERK  
04 SEP 28 AM 11:45  
US ENVIRONMENTAL  
PROTECTION AGENCY  
REGION V

Shanee Rucker

Shanee Rucker

AECAS (MI/WI)

CERTIFIED MAIL RECEIPT NUMBER: 70010320000602952195



